

BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES OF THE  
STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING ON
Rules I through XIV and repeal of	)	PROPOSED ADOPTION AND
37.107.101, 37.107.103, 37.107.104,	)	REPEAL
37.107.107, and 37.107.109	)	
pertaining to the Montana marijuana	)	
act	)	

TO: All Concerned Persons

1. On August 31, 2011, at 1:30 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed adoption and repeal of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on August 22, 2011, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. The rules as proposed to be adopted provide as follows:

NEW RULE I DEFINITIONS For purposes of the Montana medical marijuana registry:

(1) "Applicant" means a person applying to become a provider, marijuana-infused products provider (MIPP), or registered cardholder.

(2) "Authorized employee" means:

(a) an employee of the department who has received written authorization from the Department of Public Health and Human Services director or the director's designee to obtain individual names and other identifying information from the marijuana registry;

(b) an employee of a state or local law enforcement agency who is authorized to obtain marijuana registry information through the Montana Criminal Justice Information Network (CJIN)/marijuana registry interface; or

(c) an employee of a state or local government agency, including a state or local law enforcement agency, who has received written authorization to obtain marijuana registry information. Written authorization, as applicable, must be provided to the department from a state agency director or director's designee, county sheriff, police chief, county attorney, or city attorney.

(3) "Cultivate" means to grow, propagate, clone, or harvest medical marijuana for use by registered cardholders.

(4) "Fee" means the mandatory fees necessary to process a medical marijuana registry card application.

(5) "Fingerprint card" means the department's FD-258 fingerprint card utilized to facilitate a Federal Bureau of Investigation (FBI) fingerprint and background check for provider or MIPP applicants.

(6) "Landlord Permission Form" means a completed, signed, and notarized form which gives a registrant who is renting or leasing the property where marijuana will be cultivated and manufactured for medical purposes, permission to do so, by the property owner. The form must be provided by the department.

(7) "Manufacture" means the act of preparing and processing usable marijuana into a marijuana-infused product. A marijuana-infused product must be labeled as to indicate that it contains medical marijuana.

(8) "Physician statement" means a written statement by a Montana licensed physician on one of three department forms certifying the registered cardholder applicant's debilitating condition. Physician statement forms include:

- (a) Physician Statement for Debilitating Condition;
- (b) Physician Statement for Chronic Pain Diagnosis; or
- (c) Physician Statement for Minors.

(9) "Proof of residency" means a readable photocopy of a current Montana driver's license or Montana state-issued identification card.

(10) "Registrant" means any provider, MIPP, or registered cardholder who has been approved for, and entered into, the department registry.

(11) "Registry" means the department's confidential medical marijuana record identifying medical marijuana cardholders, providers, and MIPPs.

(12) "Residential health care facility" means an adult day care center, an adult foster care home, an assisted living facility, or a retirement home as defined in 50-5-101, MCA.

AUTH: Ch. 419, Section 23, L. 2011

IMP: Ch. 419, Sections 3, 4, 5, 7, 9, 23, L. 2011

## NEW RULE II REGISTERED CARDHOLDER APPLICATION PROCESS

(1) All applicants must have a Montana mailing address and submit an application packet on forms provided by the department for consideration to be placed in the registry.

(2) Application forms are available from and must be submitted to the Department of Public Health and Human Services, Licensure Bureau, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953. Application forms are also available on the department's web site at [www.dphhs.mt.gov/medicalmarijuana](http://www.dphhs.mt.gov/medicalmarijuana).

(3) Registered cardholder application materials that must be provided include:

(a) State of Montana Medical Marijuana Registered Cardholder Application Form. The information on this form includes:

- (i) the applicant's name, address, date of birth, and social security number;
- (ii) verification that the applicant:

- (A) will cultivate and manufacture marijuana for the applicant's own use; or
- (B) will obtain marijuana from a provider or marijuana-infused products provider.
- (iii) verification that the applicant agrees to not divert to any other person the marijuana that the applicant cultivates, manufactures, or obtains for the applicant's debilitating medical condition; and
- (iv) verification that the applicant is not in the custody of, or under the supervision of, the Montana Department of Corrections (DOC) or a youth court.
- (b) proof of residency;
- (c) signed, applicable Physician Statement attesting to the applicant's diagnosis of a debilitating medical condition as defined in [Section 2 of SB 423], diagnosis of chronic pain, or certification for use by a minor. The Physician Statement includes:
  - (i) physician's name, address, and telephone number; and
  - (ii) physician's Montana medical license number.
  - (d) applicable fees as outlined in [New Rule V]; and
  - (e) landlord permission form, if applicable.
- (4) The department will verify with the Montana Board of Medical Examiners that the attending physician, and, if applicable, the referral physician, are licensed to practice medicine in Montana and the license is in good standing.
- (5) The department must either approve or deny a registered cardholder application within 30 business days of receiving completed application materials. If approved, the department must issue a registry identification card within five business days of approving the application.
- (6) Applicants who designate, on the application form, a provider or a MIPP who is not already registered with the department, will be issued a registry identification card listing no provider or MIPP.
  - (a) Named providers or MIPPs who are not already registered with the department will be required to submit application materials and be approved for the registry by the department, before they can be a provider or MIPP.
  - (b) Upon approval by the department, the registered cardholder will be issued a new card with the name of the registered provider or MIPP.
- (7) The registry identification card expires one year from the date of issuance except when:
  - (a) the physician statement provides a written certification for a shorter period of time; or
  - (b) a registered cardholder changes provider or MIPP. When a change request form is received, processed, and approved by the department the registered cardholder's current card becomes void. The new card is not valid until it is received by the registered cardholder.
- (8) Incomplete application packets will be handled pursuant to [NEW RULE VII].
- (9) If the registered cardholder application is denied, the department will send the applicant notice of and reasons for the denial. Rejection of the application is considered a final department action, subject to judicial review.

AUTH: Ch. 419, Section 23, L. 2011

IMP: Ch. 419, Sections 3, 4, 7, 23, L. 2011

NEW RULE III MINOR APPLICATION PROCESS (1) In addition to the requirements outlined in [Section 4 of SB 423] the minor's custodial parent or legal guardian with responsibility for health care decisions must submit to the department a Minor Registry Application Packet. A Minor Registry Application Packet can be obtained from the Department of Public Health and Human Services, Licensure Bureau, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953. Application forms are also available on the department's web site at [www.dphhs.mt.gov/medicalmarijuana](http://www.dphhs.mt.gov/medicalmarijuana). A complete Minor Registry Application Packet must include:

(a) Minor Registered Cardholder Application Form that includes the following information:

(i) the applicant's name, address, date of birth, and, if issued, social security number; and

(ii) verification that the minor applicant is not in the custody of, or under the supervision of, the DOC or a youth court.

(b) MIPP Application as outlined in [NEW RULE IV];

(c) Physician Statement for Minors; and

(d) Landlord Permission Form, if applicable.

(2) Additionally, a completed minor application must include legal documentation affirming that the person completing the application is the legal guardian of the minor and has responsibility for health care decisions.

(a) If the minor has more than one legal guardian having responsibility for health care decisions, both individuals must sign the application form giving their consent for the minor to use marijuana to treat a debilitating medical condition as defined in [Section 2, SB423].

(b) It will be up to the legal guardians having health care decisions to decide which individual will serve as the minor's MIPP. Both individuals must indicate concurrence of this decision on the Minor Application Form.

(3) Incomplete application packets will be handled pursuant to [NEW RULE VII].

AUTH: Ch. 419, Section 23, L. 2011

IMP: Ch. 419, Sections 3, 4, 23, L. 2011

NEW RULE IV PROVIDER OR MIPP APPLICATION PROCESS

(1) Provider/MIPP applicants must be:

(a) a Montana resident; and

(b) named by a registered cardholder on the cardholder's application or change request form.

(2) Provider application materials are available from the Department of Public Health and Human Services, Licensure Bureau, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953. Application forms are available on the department's web site at [www.dphhs.mt.gov/medicalmarijuana](http://www.dphhs.mt.gov/medicalmarijuana). Completed provider/MIPP application materials must include:

(a) Provider/MIPP Application form that includes:

- (i) the applicant's name, address, date of birth, and social security number; and
- (ii) verification that the applicant:
  - (A) is not in the custody of, or under the supervision of, the DOC or a youth court;
  - (B) does not have a felony conviction or a conviction for any drug offense;
  - (C) has not been convicted of a violation under [Section 16, SB423];
  - (D) has not failed to pay any taxes, interest, penalties, or judgments due to a government agency;
  - (E) has not defaulted on a government-issued student loan;
  - (F) has not failed to pay child support; and
  - (G) has not failed to remedy an outstanding delinquency for child support or for taxes or judgments owed to a government agency;
- (b) applicable fee as specified in [NEW RULE V];
- (c) legible copy of the individual's Montana driver's license or other Montana state-issued identification card; and
- (d) fingerprint cards as required by [NEW RULE VI].
- (3) The department must either approve or deny a provider or MIPP application within 30 business days of receipt of a completed application. If approved, the department must issue a registry identification card to the provider or MIPP applicant within five business days.
- (4) Providers/MIPPs must reapply annually. Providers/MIPPs do not need to reapply every time they are named by a registered cardholder, unless it has been one year since their last application was approved.
- (5) Provider/MIPP registration will be revoked if the provider/MIPP is no longer named by a registered cardholder.
- (6) If a former provider/MIPP, whose registration has been revoked or has expired, is named by a registered cardholder on an application or change request form, the former provider must reapply for the program.
  - (a) A former provider/MIPP, who is reapplying for the registry, does not require a fingerprint background check unless it has been 12 months or more from the date their fingerprints were received by the department from the Montana Department of Justice (DOJ).
  - (b) When the former provider/MIPP is approved by the department, the \$50 provider/ MIPP application fee will be due when fingerprinting is again required pursuant to [NEW RULE VI].
- (7) Incomplete application packets will be handled pursuant to [NEW RULE VII].
- (8) If the provider/MIPP application is denied, the department will send the applicant notice of and the reasons for denial.
- (9) Rejection of any application is considered a final department action, subject to judicial review.

AUTH: Ch. 419, Section 23, L. 2011

IMP: Ch. 419, Section 3, 5, 23, L. 2011

NEW RULE V FEES (1) The department will assess the following fees:

- (a) registered cardholder application fee of \$25;
  - (b) provider application fee of \$50;
  - (c) MIPP application fee of \$50;
  - (d) a combined provider and MIPP application fee of \$50; and
  - (e) annual registered cardholder renewal fee of \$10.
- (2) All fees must be submitted with the application and must be paid by check or money order payable to the Department of Public Health and Human Services.
- (3) Fees are nonrefundable regardless of final application status.
- (4) Renewal applications received by the department after the expiration date will be treated as new applications and require a \$25 fee.

AUTH: Ch. 419, Section 23, L. 2011

IMP: Ch. 419, Section 23, L. 2011

#### NEW RULE VI PROVIDER AND MIPP FINGERPRINT REQUIREMENTS

- (1) Two completed and acceptable fingerprint cards must be submitted with provider/MIPP application materials. The fingerprint cards provided by the department are the only fingerprint cards to be accepted for this purpose. Photocopied duplicates are not valid.
- (2) The fingerprint card must be processed under these conditions:
- (a) fingerprints must be rolled onto each of the two provided fingerprint cards by a trained individual within a Montana law enforcement agency; and
  - (b) the individual rolling the prints must maintain control and possession of the fingerprint cards once the prints are rolled onto the cards and must place the cards into an envelope, seal it, and mail it to the department:
    - (i) The individual rolling the prints may also place the applicant's application and applicable fee into the envelope as long as the individual rolling the prints maintains control and possession of the fingerprint cards as required by this rule.
- (3) Upon completion of the fingerprint background check, the DOJ will return both fingerprint cards to the department. Upon receipt of the cards, the department will destroy the returned fingerprint cards.
- (4) If an adequate set of readable fingerprints cannot be obtained, the DOJ will notify the department that a federal name-based background check has been submitted for the named individual.
- (a) Federal name-based background checks can take up to 90 days to complete.
- (5) Fingerprint cards are considered complete when they are returned to the department by the DOJ. The 30 business day application approval time required by the department will begin on the day the fingerprint cards are returned.
- (6) The fingerprint background checks are valid for a 12-month period. Thirty days prior to the expiration date of the background check, new prints must be obtained following the same procedures outlined in this rule and returned to the department by the DOJ.
- (7) If the law enforcement agency charges a fee for fingerprinting, the applicant is responsible for the fee.

AUTH: Ch. 419, Section 23, L. 2011

IMP: Ch. 419, Sections 3, 5, 23, L. 2011

NEW RULE VII INCOMPLETE APPLICATION, RENEWAL, OR CHANGE REQUESTS (1) Applications, physician statements, landlord permissions, change request forms, and other materials received by the department must be completed, signed, and accompanied by all other paperwork and fees necessary to be considered a complete application, renewal, or change request.

(2) Incomplete application, renewal, or change request materials and any accompanying check or money order will be returned to the applicant or registrant with an explanation of what is needed to complete the application, renewal, or change request.

(a) Provider/MIPP application packets requiring fingerprint cards will not be sent back to the applicant if fingerprint cards are missing.

(i) After the materials are screened by the department, fingerprint cards will be sent to this applicant with instructions on obtaining and returning fingerprint cards to the department.

(ii) To be considered submitted, these fingerprint cards must be postmarked no later than 30 days after having been sent to the applicant or all application materials held by the department will be returned to the applicant.

(3) Any complete application materials received 30 days or more before the expiration date will be processed in the order received. Cards will expire based on the date of issuance, not based on the expiration date of the previous card.

AUTH: Ch. 419, Section 23, L. 2011

IMP: Ch. 419, Sections 3, 5, 23, L. 2011

NEW RULE VIII PROPERTY RESTRICTIONS (1) In addition to the application procedures outlined in [NEW RULE II], a registered cardholder, provider, or MIPP must attest in writing on forms provided by the department:

(a) whether property used for cultivating or manufacturing medical marijuana is owned, leased, or rented by the cardholder, provider, or MIPP; and

(b) if property is rented or leased, the cardholder, provider, or MIPP must have the landlord complete the Landlord Permission form, acknowledging that the property is being used for this purpose.

AUTH: Ch. 419, Section 23, L. 2011

IMP: Ch. 419, Sections 3, 5, 23, L. 2011

NEW RULE IX REPLACING LOST OR STOLEN REGISTRY IDENTIFICATION CARDS (1) If a registry identification card has been lost or stolen, the department must receive notification from registrant prior to replacing the registry identification card.

(2) Upon receipt of notification of a lost or stolen card by the registrant, the department will reissue as duplicate the registry identification card and send it to the registrant.

(3) A lost or stolen card should be reported to law enforcement by the registrant.

AUTH: Ch. 419, Section 23, L. 2011

IMP: Ch. 419, Sections 3, 23, L. 2011

NEW RULE X INVALIDATION OR REVOCATION OF REGISTRY IDENTIFICATION CARDS (1) A registry card for a registered cardholder can be revoked for the following reasons:

- (a) the registered cardholder no longer has a debilitating medical condition;
  - (b) the written recommendation has been rescinded by the physician;
  - (c) the registrant is now in the custody of, or under the supervision of, the DOC or a youth court;
  - (d) the registered cardholder fails to report to the department within ten days a change:
    - (i) in name;
    - (ii) in street, mailing, or physical address;
    - (iii) in physician;
    - (iv) in provider/MIPP; or
    - (v) concerning the debilitating medical condition.
  - (e) a landlord revokes their permission in writing and a change request form, with a new physical address, is not received within ten business days of the receipt of the revocation;
  - (f) a registered cardholder is found to be in violation of [Section 15, SB423] or [Section 16, SB423]; or
  - (g) mail sent to the registered cardholder by the department is returned, undeliverable by the United States Postal Service (USPS), and no change of address is submitted within twenty business days after the day the mail is returned to the department.
- (2) In addition to the criteria stated in [Section 5 of SB423] the department will revoke an active provider/MIPP registry identification card if the department determines that the provider/MIPP has violated the provisions of the Montana Marijuana Act in the following ways:
- (a) the provider/MIPP pleads guilty to, or is convicted of, any offense related to driving under the influence of alcohol or drugs;
    - (i) a registry card revocation under this circumstance must be for the period of suspension or revocation of the individual's driver's license as set forth in 61-5-208 and 61-8-410, MCA. If a provider/MIPP registry card is due to be renewed during a period of driver's license revocation, it may not be renewed by the department until the term of the driver's license revocation has elapsed.
  - (b) fails to report to the department a change in name or address within ten business days of the change;
  - (c) a provider/MIPP whose registry identification was issued under [Section 35 of SB 423] fails to submit fingerprints and pass a fingerprint background check by October 1, 2011;
  - (d) the results of a fingerprint background check conducted after issuance of the registry card show that the person is ineligible for the card pursuant to [Section 5 of SB423];



(e) the provider/MIPP is no longer named by any registered cardholder on their application or change request form; or

(f) mail sent to the provider/MIPP by the department is returned, undeliverable by the USPS, and no change of address is submitted within 20 business days after the day the mail is returned to the department.

(3) A registration card is not valid if the card has been altered or mutilated. A photocopy of the registry card is not valid.

(4) If a provider/MIPP registry card is revoked for any reason, the department will notify the provider/MIPP and the registered cardholder in writing and advise the registered cardholder that the provider/MIPP can no longer assist them.

AUTH: Ch. 419, Section 23, L. 2011

IMP: Ch. 419, Sections 3, 5, 11, 23, 35, L. 2011; 45-9-203, 61-11-101, MCA

#### NEW RULE XI NOTIFICATION TO LOCAL LAW ENFORCEMENT

(1) Pursuant to [Section 3 of SB423] the department will release to the county sheriff the names of providers and MIPPs within the county sheriff's jurisdiction not previously released.

(2) The names of new providers and MIPPs for the reporting month will be released by the 15th of the following month. Additionally, any providers or MIPPs who have been revoked from the registry or have otherwise become ineligible will be reported at this time.

AUTH: Ch. 419, Section 23, L. 2011

IMP: Ch. 419, Sections 3, 23, L. 2011

NEW RULE XII HEALTH CARE FACILITY PROCEDURES (1) A residential health care facility must develop a policy regarding the use of medical marijuana within the facility.

(2) Should the facility choose to allow the use of medical marijuana by residents, the policy and procedures must cover, at a minimum:

- (a) compliance with the Montana Clean Air Act;
- (b) methods the facility will allow for the resident use of medical marijuana;
- (c) physical security of the medical marijuana; and
- (d) resident confidentiality.

(3) A policy addressing delivery of hospice services related to the use of medical marijuana for resident or patient use must be developed.

AUTH: Ch. 419, Section 23, L. 2011

IMP: Ch. 419, Sections 3, 11, 23, L. 2011

NEW RULE XIII COMPLAINT HOTLINE (1) The department will establish a hotline to receive complaint information concerning the Medical Marijuana Program. Complaints may also be submitted to the department utilizing the complaint form on the department's web site at [www.dphhs.mt.gov/medicalmarijuana](http://www.dphhs.mt.gov/medicalmarijuana).

(2) The department will submit the complaint information to the appropriate agency or entity.

- (3) Anonymous complaints will not be considered.

AUTH: Ch. 419, Section 23, L. 2011

IMP: Ch. 419, Sections 3, 21, 23, L. 2011

NEW RULE XIV DISCLOSURE OF CONFIDENTIAL MARIJUANA  
REGISTRY INFORMATION (1) The department must disclose marijuana registry  
information to authorized employees of the department as necessary to perform the  
official duties of the department.

(2) The department must disclose marijuana registry information to  
authorized employees of state or local government agencies, including state or local  
law enforcement agencies, only as necessary to verify that an individual is a lawful  
possessor of a registry identification card.

(3) The department must disclose marijuana registry information as  
otherwise required by law.

AUTH: Ch. 419, Section 23, L. 2011

IMP: Ch. 419, Sections 3, 23, L. 2011

4. The department proposes to repeal the following rules:

37.107.101 DEFINITIONS, is found on page 37-26707 of the Administrative  
Rules of Montana.

AUTH: 50-46-210, MCA

IMP: 50-46-103, 50-46-210, MCA

37.107.103 REGISTRATION AND APPLICATION PROCESS, is found on  
page 37-26709 of the Administrative Rules of Montana.

AUTH: 50-46-210, MCA

IMP: 50-46-103, 50-46-210, MCA

37.107.104 INVALIDATION OR REVOCATION OF REGISTRY  
IDENTIFICATION CARD, is found on page 37-26711 of the Administrative Rules of  
Montana.

AUTH: 50-46-210, MCA

IMP: 50-46-103, 50-46-210, MCA

37.107.107 FEES, is found on page 37-26713 of the Administrative Rules of  
Montana.

AUTH: 50-46-210, MCA

IMP: 50-46-103, 50-46-210, MCA

37.107.109 REPLACING LOST OR STOLEN REGISTRY IDENTIFICATION CARDS, is found on page 37-26715 of the Administrative Rules of Montana.

AUTH: 50-46-210, MCA

IMP: 50-46-103, 50-46-210, MCA

The department is repealing ARM 37.107.101, 37.107.103, 37.107.104, 37.107.107, and 37.107.109 because Senate Bill 423 (SB423) repealed the department's authority to issue medical marijuana cards under Initiative I-148.

#### 5. Statement of Reasonable Necessity.

In 2011, Montana's 62nd Legislature passed Senate Bill 423 (SB423) establishing the Montana Marijuana Act (Act) and revising laws relating to the use of marijuana; creating a registry program for the cultivation, manufacture, transportation, and transfer of marijuana by certain individuals; requiring reporting; allowing inspections and requiring legislative monitoring. Subsequently, the district court has issued an injunction on several provisions of SB423.

Emergency rules were published in Montana Administrative Register Issue No. 12, at page 1166, effective June 1, 2011. The department is proposing these new rules replace the emergency rules which expire on September 28, 2011. This rulemaking package proposes new rules to facilitate the operation of the Medical Marijuana Registry under the new legislation. These rules repeal existing rules previously promulgated under Title 50, chapter 46, parts 1 and 2, MCA, which were also repealed by SB423.

SB423 changes the requirements for individuals to register as cardholders, in addition to changing requirements for "caregivers" who are now referred to as "providers" or "marijuana-infused products providers (MIPP)". SB423 also reflects changes in the debilitating conditions for which individuals can register under and includes changes to physician certifications for severe and chronic pain diagnosis.

The proposed rules address the statutory mandates in which the department will process applications for registry identification cards for providers and marijuana-infused products providers and for persons with debilitating medical conditions and renewal of registry identification cards; acceptable forms of proof of Montana residency, and the procedures for obtaining fingerprints for the required fingerprint and background check. The proposed rules also establish fees that generate revenue sufficient to offset all expenses of implementing and administering the Montana Marijuana Act (ACT).

SB423 repealed all department authority for the operation of the Medical Marijuana Registry. Without the emergency rules and these proposed rules, the department's ability to process new registry identification cards is eliminated. The department determined the rules must accommodate individuals currently on the registry as well as future applicants.

The department considered and rejected operating the existing Medical Marijuana Registry under the same guidelines as set out in rules that are to be repealed. SB423 has additional requirements that must be addressed in rule to fully implement the legislation. The department also considered and rejected promulgating rules similar to the emergency rules, as additional requirements are necessary to fulfill the statutory requirements.

#### New Rule I

This rule is necessary to guide the reader in terms used within the rules that are not defined within the legislation. The definitions serve as a framework for understanding several new concepts presented in SB423 requirements for the Medical Marijuana Registry. Defining the terms provides clarification to applicants, cardholders, providers, MIPPs, physicians, the general public, and department staff.

#### New Rule II, New Rule III, and New Rule IV

These rules are necessary to provide guidance for those applying to be placed on the Medical Marijuana Registry. The requirements for being placed on the registry vary for cardholders, providers and MIPPs, as well as minors. These rules identify the necessary components for applying to be placed on the registry. Without these rules, the applicants will not be aware of the department requirements to administer provisions of the Act.

#### New Rule V

This new rule is necessary to promulgate fees to generate sufficient revenue to offset all expenses of implementing and administering the Act. The proposed fees were calculated using historic information from the Medical Marijuana Program since its inception in 2005. Application and renewal fees are proposed to remain consistent with the fees previously charged. New fees for providers and MIPPs are established by using the cost charged by the Department of Justice/Federal Bureau of Investigation (FBI) for conducting fingerprint background checks. The department considered the costs of processing these background checks in addition to modifications to the administrative and business processes necessary to add this requirement when proposing the fee at \$50 for providers and MIPPs. It is anticipated that an average of 5,000 applicants per year will be approved for the program generating \$125,000 in revenue and \$200,000 will be generated from 20,000 approved cardholder renewals. It is anticipated that 1,000 existing caregivers will apply and be approved as providers/MIPPs generating \$50,000 in revenue. However, \$28.50 of the \$50 fee will be used to pay for the cost of the FBI fingerprint check making the department's net revenue from the provider application fee \$21,500.

#### New Rule VI

This new rule is necessary to identify the process for obtaining the required fingerprint background check for providers and MIPPs. Without this new rule, these applicants would not be aware of the requirements and process for obtaining the fingerprint background check. Applicants must use department-issued fingerprint cards which identifies the department's originating agency identifier number in order for the FBI to process the fingerprint card on behalf of the department.

#### New Rule VII

This new rule is necessary to identify the processes for submitting renewals or change requests and the handling process for incomplete application materials. SB423 requires additional information be submitted to the department. Therefore, the department is providing guidance to ensure that applicants are aware of the necessary requirements to complete application processing.

#### New Rule VIII

This new rule is necessary to ensure registrants have landowner permission if marijuana is to be cultivated or manufactured on premises rented or leased by the registrant. The property owner is entitled to know and have the option of granting or denying permission for the cultivation or manufacture of marijuana by a renter or lessee. Requiring this permission from the property owner assures that the property owner is made aware that marijuana may be cultivated or manufactured on the property. This provision protects the owner's interest in the property.

#### New Rule IX

This new rule is necessary to identify the process for replacing lost or stolen registry identification cards. SB423 requires registrants to carry their registry ID and a photo ID at all times. Therefore a registrant should notify the department and law enforcement as soon as possible when the registrant loses their registry identification or it is stolen.

#### New Rule X

This new rule is necessary to identify the provision which invalidates or revokes a cardholder or provider/MIPP registry card. If the cardholder or provider/MIPP no longer meets the requirements of the registry, the department must have the ability to invalidate or revoke the registry card. This protects the integrity of the registry by ensuring only registrants who are eligible have a registry identification card. Without this rule, the department lacks provisions and processes to revoke or invalidate registry cards. Ineligible registrants would be allowed to remain on the registry until the card expired, which would not meet the intent of the law.

#### New Rule XI

This new rule is necessary to implement the provision to provide the county sheriff or other appropriately authorized law enforcement designee with the names of providers and MIPPs within their jurisdiction. The department chose to centralize this distribution in order to timely and accurately facilitate the information distribution.

#### New Rule XII

This new rule is necessary because adult day care, adult foster homes, assisted living facilities, and retirement homes must provide guidance in the event a registered cardholder applies for residency or is living in the facility. The proposed rule protects the cardholder, staff, and the facility by requiring a policy to be in place regarding the use and storage of medical marijuana within a residential care facility. Requiring a policy to allow or not allow medical marijuana will provide a consistent approach to the use of medical marijuana in a residential care facility. Residential care facilities have discretion regarding the use of medical marijuana and therefore must provide guidance to staff, families, and residents.

#### New Rule XIII

This new rule is necessary to address the provisions of the statute requiring that the department provide a complaint hotline. The department will utilize the established complaint forms available on the web site as well as a telephone hotline to allow greater access to submit complaints regarding the Medical Marijuana Program. The department will not consider anonymous complaints. The department believes the hotline and complaint process are intended to report abuses within the Medical Marijuana Program to be dealt with directly by the program or referred as needed.

#### New Rule XIV

This new rule is necessary to indicate the process required for an individual to be identified as an authorized department, local, or state employee. This rule will provide safeguards to ensure the confidentiality of registry information is accessed appropriately. Only individuals with written authorization may access registry information in order to conduct specific duties of their job.

#### Fiscal Impact

It is anticipated that an average of 5,000 applicants per year will be approved for the program generating \$125,000 in revenue and \$200,000 will be generated from 20,000 approved cardholder renewals. It is anticipated that 1,000 existing caregivers will apply and be approved as providers/MIPPs generating \$50,000 in revenue. However, \$28.50 of the \$50 fee will be used to pay for the cost of the FBI fingerprint check making the department's net revenue from the provider application fee \$21,500. The Medical Marijuana Program employs 5.5 full-time employees (FTE).

#### Effective Date

The effective date of these proposed new rules will be September 29, 2011.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., September 8, 2011.

7. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above or may be made by completing a request form at any rules hearing held by the department.

9. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by telephone, e-mail, and mail on July 22, 2011.

Shannon L. McDonald  
Rule Reviewer

Laurie Lamson for  
Anna Whiting Sorrell, Director  
Public Health and Human Services

Certified to the Secretary of State August 1, 2011.